

No. 50207-1-II

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IN THE COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION TWO

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TIMBERLAND BANK, a Washington corporation,

Plaintiff/Respondent,

v.

SHAWN A. MESAROS and JANE DOE MESAROS, individually, and  
the marital community they comprise, THE STATE OF WASHINGTON,  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES: and Also all  
other persons or parties unknown claiming any right, title, estate, lien, or  
interest in the real estate described in the complaint herein,

Defendant/Appellant.

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APPELLANT'S OPENING BRIEF

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Kevin A. Bay, WSBA 19821  
James Bulthuis, WSBA 44089  
TOUSLEY BRAIN STEPHENS PLLC  
1700 Seventh Avenue, Suite 2200  
Seattle, WA 98101

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## **I. INTRODUCTION**

Defendant Shawn Mesaros (“Mesaros”) appeals the trial court’s entry of a charging order against Mesaros’ membership interest in Pamria, LLC. While a charging order under RCW 25.15.256 properly entitles a judgment creditor to receive distributions the member would otherwise receive from the LLC (the member’s “transferable interest”), the trial court granted relief that went far beyond the limitations enacted by the Washington Legislature. Accordingly, the offending provisions of the trial court’s order should be reversed and vacated.

## **II. ASSIGNMENT OF ERROR & ISSUES PERTAINING THERETO**

### **Assignment of Error No. 1**

The trial court erred in granting a charging order against judgment debtor Mesaros’ membership interest in a limited liability company that went beyond the scope of RCW 25.15.256 and contravened RCW 25.15.251 by giving judgment creditor Timberland Bank access to the company’s records and restraining the judgment debtor from operating and managing the company.

### Issue No. 1

Did the trial court err in entering a charging order against a judgment debtor’s transferable interest in a limited liability company that also entitled

the judgment creditor to obtain all of the company's records when RCW 25.15.251(1)(b) specifically states that a charging order does not entitle a creditor to such relief?

Issue No. 2

Did the trial court err in entering a charging order against a judgment debtor's transferable interest in a limited liability company interest that also restrained the judgment debtor from managing and operating the LLC when RCW 25.15.251(1)(b) specifically states that such relief is unavailable?

**III. STATEMENT OF THE CASE**

Plaintiff Timberland Bank obtained a judgment against defendant Shawn Mesaros. (CP 22).<sup>1</sup>

Mesaros is the sole member and manager of Pamria, LLC, a Washington limited liability company involved in the financial services industry. (CP 32).

Timberland Bank sought to enforce its judgment by, among other things, obtaining a charging order against Mesaros' interest in Pamria. (CP 21-23). In its motion for a charging order, Timberland Bank sought additional relief, specifically an order requiring Mesaros to turn over all

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<sup>1</sup> There is another appeal pending in this court, Appeal No. 49156-7-II, arising out of another ruling by the trial court related to collection of this judgment.

books and records of Pamria, LLC and an order restraining Mesaros from taking any action or transacting any business on behalf of Pamria, LLC. (CP 22).

Mesaros did not oppose the charging order but did oppose the additional relief sought by Timberland Bank. (CP 26-28).

The trial court granted Timberland Bank's request for a charging order. Mesaros does not appeal that ruling. The trial court, however, went further and ruled that:

- "Defendant Shawn Mesaros shall provide true copies of all corporate records requested in the motion to the attorney for Plaintiff within 10 days of this order;
- Defendant Shawn Mesaros shall be restrained from taking any corporate action on behalf of Pamria, LLC, including accessing any funds belonging to the LLC."

(CP \_\_).<sup>2</sup>

Mesaros does appeal these rulings and filed his notice of appeal on February 13, 2017. After Mesaros appealed, the trial court entered two

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<sup>2</sup> The order at issue was inadvertently omitted from the Clerk's Papers. Appellant has designated the order in a supplemental Designation of Clerk's Papers.

orders holding Mesaros in contempt for failing to comply with the trial court's earlier rulings.

#### **IV. ARGUMENT**

##### **A. Standard of Review.**

Because the issues on appeal involve the choice, interpretation or application of a statute to a set of facts, it is a matter of law this Court reviews *de novo*. *Riofta v. State*, 134 Wn. App. 669, 680, 142 P.3d 193 (2006); *State v. Law*, 110 Wn. App. 36, 39, 38 P.3d 374 (2002).

##### **B. The trial court erred in granting Timberland Bank's request for access to Pamria's corporate records.**

On application by a judgment creditor, a court may charge a judgment debtor's transferable interest in a limited liability company with payment of the unsatisfied judgment. RCW 25.15.256(1). A member's "transferable interest" is the member's right to receive distributions of the limited liability company's assets. RCW 25.15.006(19). If a charging order is granted, the judgment creditor has only the rights of a transferee. RCW 25.15.256(1). A charging order is the exclusive remedy by which a judgment creditor can satisfy its judgment from a member's transferable interest in a limited liability company. RCW 25.15.256(5).

A transferee of a member's transferable interest is only entitled to receive distributions to which the transferor would otherwise be entitled. RCW 25.15.251(2). A transferee is not entitled to access to information concerning the limited liability company's transactions or to obtain access to information to which a member would otherwise be entitled or to the limited liability company's records. RCW 25.15.251(1)(b).

By virtue of the charging order, Timberland Bank had the rights of a transferee of Mesaros' transferable interest in Pamria, LLC. As such, Timberland Bank was entitled to receive the distributions Mesaros would otherwise receive from Pamria, LLC. But Timberland Bank was not entitled to the corporate records of Pamria, LLC. The trial court's order granting Timberland Bank such access was contrary to RCW 25.15.251(1)(b) and was error.

If the trial court's ruling is vacated, so too should any contempt orders against Mesaros for failing to comply with the erroneous ruling.

**C. The trial court erred in granting Timberland Bank's request to restrain Mesaros from operating and managing Pamria, LLC.**

When the trial court entered the charging order, it also ruled that Mesaros was restrained from operating or managing Pamria, LLC. This was error.



First, as stated above, a transferee of a member's transferable interest in a limited liability company is entitled to receive the distribution of assets the transferor would otherwise receive. RCW 25.15.251(2). But the transferee is not entitled to participate in the management of the limited liability company's activities. RCW 25.15.251(1)(b). It follows that if a transferee is not entitled to participate in management of a limited liability company, the transferee is likewise not entitled to restrain the business activities of the limited liability company or restrict who may take action on behalf of the company; selecting who may or may not manage an LLC is "participating" in the management thereof. Thus, Timberland Bank, as transferee, was not entitled to participate, or prevent Mesaros from participating, in the management of Pamria, LLC.

Second, there is no provision in title 25 that allows a court to restrain a judgment debtor from managing or participating in the management of a limited liability company. To the contrary, a charging order is the exclusive remedy by which a judgment creditor can satisfy a judgment out of a judgment debtor's interest in a limited liability company. RCW 25.15.256(5). Timberland Bank's sole remedy, therefore, was the charging order and it was not entitled to a restraining order.

Timberland Bank argued below that RCW 25.15.131(1)(b) somehow enabled the trial court to restrain Mesaros from managing Pamria, LLC. (CP 32). That statute provides that a member is dissociated as a member of a limited liability company upon the transfer of all of the member's transferable interest. Timberland Bank's argument, however, overlooks the distinction between a member and a manager of a limited liability company. A person who is both a member and a manager, such as Mesaro was here, has the rights and powers of a member and also the rights and powers of a manager. RCW 25.15.161. Thus, even if dissociation under RCW 25.15.131 somehow allowed the trial court to restrain Mesaros from exercising his rights as a member of Pamria, LLC, it did not enable the trial court to disrupt Mesaros' rights as manager of Pamria, LLC. Further even if Mesaros is dissociated as a member of Pamria, LLC, such dissociation does not give Timberland Bank additional rights to manage or restrain management of Pamria, LLC. Timberland Bank's exclusive remedy is charging Mesaros' transferable interest in Pamria, LLC. RCW 25.15.256(5).

If this ruling is vacated, so too should any contempt orders for failing to comply with the erroneous ruling.

## V. CONCLUSION

The trial court's charging order exceeded the statutory limitations set out in RCW 25.15.256 and violated RCW 25.15.251(1)(b). The order, as far as it allows Timberland Bank access to Pamria, LLC's records and restrains Mesaros' management thereof, should be vacated, as well as any contempt orders that arise out of the vacated order.

TOUSLEY BRAIN STEPHENS PLLC



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Kevin A. Bay, WSBA #19821

Email: [kbay@tousley.com](mailto:kbay@tousley.com)

James Bulhuis, WSBA #44089

Email: [JBulhuis@Tousley.com](mailto:JBulhuis@Tousley.com)

1700 Seventh Avenue, Suite 2200

Seattle, WA 98101

Tel: (206) 682-5600

Fax: (206) 682-2992

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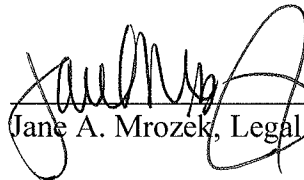
James T. Parker  
Parker, Winkleman & Parker, PS  
813 Levee Street  
PO Box 700  
Hoquiam, WA 98550  
Email: jim@hoquiamlaw.com

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EXECUTED this 31st day of July, 2017, at Seattle, Washington.

  
\_\_\_\_\_  
Jane A. Mrozek, Legal Assistant

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**TOUSLEY BRAIN STEPHENS PLLC**

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